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SEX OFFENDER COMMITMENT PROGRAM [WIC 6604]

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CONREP POLICY AND PROCEDURE MANUAL

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ESTABLISHMENT OF SEX OFFENDER COMMITMENT PROGRAM (SOCP)

Overview

The Sex Offender Commitment Program (SOCP) was established by legislation (Chapter 763, Statutes of 1995), codified in Welfare and Institutions Code (WIC) Section 6600 et seq. and became effective on January 1, 1996. Additional changes were made by subsequent legislation (Chapters 4 and 462, Statutes of 1996 Chapter 294, Statutes of 1997, and Chapter 19, Statutes of 1998).

This law provides for a civil commitment process by which persons with previous specified sex offenses who meet identified criteria (see following pages), including a diagnosed mental disorder, are committed for two years to the custody of the State Department of Mental Health (DMH) for appropriate treatment and confinement in a secure facility designated by the Director of DMH.

Application of Statute

The law (WIC 6600 et. seq.) may only be applied to a person in the custody of CDC or a parolee in revoked status who has been returned to CDC. The law cannot be applied to an individual released from custody prior to January 1, 1996 or to an individual who has been unconditionally discharged from CDC.

The SOCP commitment process involves the Department of Corrections (CDC), the Board of Prison Terms (BPT), DMH, as well as the superior court in the county in which the most recent offense which resulted in CDC custody was committed. The statute assigns specific functions and responsibilities to each of these agencies which must be carried out at designated times.

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ESTABLISHMENT OF SEX OFFENDER COMMITMENT PROGRAM (SOCP)

Program Purpose

The intent of these statutes is to increase public safety and offer treatment for individuals who have a diagnosed mental disorder and, as a result of that mental disorder, are likely to engage in sexually violent criminal behavior.

The purpose of the DMH program is to achieve the legislative intent through the provision of a safe and effective continuous system of inpatient and community outpatient treatment, supervision and management services for persons committed under this law.

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PROGRAM ELEMENTS

DMH Treatment Mandate

DMH is mandated to provide treatment for persons who, at the end of their prison term, meet the specific criteria as a “sexually violent predator” and have a civil commitment established by the superior court. A SOCP patient is a person who meets the criteria and is ordered to undergo DMH treatment. Inpatient treatment occurs at either Atascadero State Hospital (males) or Patton State Hospital (females). Outpatient treatment is provided by the CONREP Program.

Outpatient Treatment

When the patient is determined by the court to no longer be a danger, if under supervision and treatment in the community, he or she may be discharged from the hospital and continue treatment in the Forensic Conditional Release Program (CONREP) pursuant to PC 1605-10. The specific patient and program procedures in all sections of **CHAPTER 1400: OUTPATIENT TREATMENT OPERATIONS** of this manual are to be followed in the supervision and treatment of these SOCP patients.

Notification Requirements [WIC 6609; 6609.1]

DMH is required by WIC 6609.1 to notify the police chief, sheriff, and district attorney that have jurisdiction over the community in which the person may be released 15 days prior to the submission of the department’s recommendation to the court. Per WIC 6609, if local law enforcement agencies request information about any SOCP patient receiving outpatient CONREP treatment, DMH must provide the information within 10 days of such a request. The information to be provided is: address, date of commitment, commitment county, date of placement in CONREP, fingerprints and a photograph. If a CONREP program receives such a request, they should immediately refer

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the requesting agency to the state hospital of discharge.

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PROGRAM ELEMENTS

Sexually Violent Predator (SVP) Criteria

Any person committed as a Sexually Violent Predator pursuant to WIC 6604 must meet all of the following criteria.

Predatory Sexually Violent Offense Against Two or More Victims

The person must be convicted of a sexually violent predatory offense for which a determinate sentence was received. By amendment, this includes prior findings of not guilty by reason of insanity, convictions resulting in a finding that the person was a mentally disordered sex offender or convictions in another state for offenses which meet the definition of "sexually violent offenses" even though the offender did not receive a determinate sentence.

There must be two or more victims.

The victims must have been strangers, persons of casual acquaintance with whom no substantial relationship exists, or the relationship was established or promoted for the primary purpose of victimization.

Likelihood of Reoffense

Likelihood of reoffense must be specifically determined in relationship to the diagnosed mental disorder. In making this determination, consider clinical indicators, institutional behaviors, risk factors for recidivism from research literature and elements of the controlling and/or past offenses.

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DEFINITIONS

“Diagnosed Mental Disorder”

This term is not exhaustively defined, but it includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

“Danger to the Health and Safety of Others”

Establishing this element does not require proof of a recent overt act while the offender is in custody.

“Predatory”

Means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship was established or promoted for the primary purpose of victimization.

“Recent Overt Act”

Means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

“Sexually Violent Offense”

Means the acts enumerated in WIC 6600(b) and include violations of PC 261(a)(2); 262(a)(1); 264.1; 288(a) or (b); 289(a) or 286 or 288a when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

WIC 6600.1(a) provides that if the victim is under the age of 14 and the offending acts involve substantial sexual conduct the offense constitutes a “sexually violent offense”.

“Substantial Sexual Conduct”

Means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender.

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INITIAL EVALUATION PROCESS

CDC Screening and Referral

Any person considered for the commitment must be approaching the end of a prison term in the Department of Corrections or have been revoked from parole by the Board of Prison Terms, and have a criminal history which indicates a conviction for specified sex offenses committed by force, violence, duress, menace or fear of injury of a victim or another person.

The California Department of Corrections (CDC) and the Board of Prison Terms (BPT), if necessary, screen each inmate and make a referral to DMH six months prior to release based on the criteria (previously described). If the CDC, in consultation with the BPT, finds that an inmate (or parolee in revoked status) meets the screening criteria for sexually violent predator as defined in WIC 6600, it will refer the case to DMH for a review and evaluation.

DMH Review and Evaluation

Documentation Review

DMH staff conduct an in-depth review of the documentation sent by CDC and BPT, and other materials as appropriate and necessary. When the review is complete, evaluations are performed by two psychologists or psychiatrists to determine the presence or absence of a mental disorder that predisposes the individual to the commission of criminal sexual acts.

Evaluation Factors

This evaluation includes an assessment of factors known to be associated with the risk of reoffense among sex offenders, including, but not limited to:

- * Criminal and psychosexual history;
- * Type, degree and duration of sexual deviance; and
- * Severity of the mental disorder.

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INITIAL EVALUATION PROCESS

DMH Review and Evaluation (cont.)

Evaluator Disagreement

If these two evaluators disagree that the individual meets SVP criteria, two additional independent evaluations are completed. There must be concurrence upon the part of either the first two or the second two evaluators that the individual meets SVP criteria before a recommendation can be made to the attorney designated to file for commitment in the superior court.

If the second set of evaluators do not concur, the inmate will be released to parole at the end of the CDC term or unconditionally discharged at the end of the statutory parole period.

Referral to District Attorney or County Counsel

If both DMH evaluators concur that the person has a diagnosed mental disorder and is likely to engage in sexually violent criminal behavior without appropriate treatment and custody, the Director of DMH will refer the case to the district attorney or county counsel of the county where the most recent controlling conviction was obtained.

DA/County Counsel Petition

If the county counsel/district attorney concurs that the case should proceed to trial, a petition for commitment of the individual will be filed in the county superior court.

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HEARING AND REVIEW PROCESS

Initial Court Review

The superior court judge shall review the petition and determine whether the petition states sufficient facts, that if true would constitute a finding of probable cause that the person is likely to engage in sexually violent predatory criminal behavior. If the court reaches this conclusion, a probable cause hearing must be conducted within ten (10) calendar days. The inmate is detained in a secure facility pending that hearing.

Probable Cause Hearing

At the probable cause hearing, a judge will determine whether there is probable cause that the person is likely to engage in sexually violent predatory criminal behavior upon release from prison. If the judge determines that there is probable cause, he or she shall order that the person remain in custody in a secure facility until a commitment trial is completed. If the judge does not find probable cause, the petition will be dismissed and the person will be released. If the person is still under parole, he or she will be returned to parole supervision.

Right to Counsel

At the probable cause hearing the person is entitled to assistance of counsel.

Commitment Trial

The person or county counsel/district attorney may request a jury trial wherein the jury must unanimously decide, beyond a reasonable doubt, that the person meets the SVP criteria. If no such request is made, the trial will be before the court without a jury.

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HEARING AND REVIEW PROCESS

Court Order for Commitment

If the court or jury unanimously finds, beyond a reasonable doubt, that the person meets the SVP criteria, he or she shall be committed for a period of two years to DMH for treatment and confinement in a secure facility. If the court or jury is not satisfied beyond a reasonable doubt, the person will be released and returned to CDC custody to serve the remainder of his or her prison term or released on parole.

Length of Commitment

A person committed as an SVP cannot be held in confinement for more than two years from the date upon which the court issued the initial order of commitment, unless a subsequent extended commitment is obtained from the court by the granting of a new petition for commitment.

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COMMITMENT TO TREATMENT

State Hospital Assignment

Currently, the two DMH hospitals which have specific SOCP programs are Atascadero (for males) and Patton State Hospital (for females.) For more details, refer to manual **Section 1310: STATE HOSPITALS, Initial Admission: SOCP Procedures**.

No Direct Outpatient Commitments

Persons committed to the SOCP may not be placed directly into an outpatient treatment program. PC 6600.05 requires that any commitment for mental health treatment pursuant to WIC 6600 shall be to a state hospital under the direction of the State Department of Mental Health, unless there are unique circumstances that would preclude the placement of a person at that facility.

Quarterly Progress Reports [PC 1605(d)]

Following commitment to outpatient status, pursuant to PC 1605(d), quarterly progress reports are due to the court regarding the status and progress of the patient. All reports are filed in the patient's medical record and must document the status and progress of the patient. For more detailed information on the contents of these reports, please refer to manual **Section 1420: REPORTS & ANNUAL REVIEW PROCESS, Quarterly Progress Reports**.

Annual Review [WIC 6605(b)]

Each SOCP patient in DMH custody and treatment will have an annual review of mental status by DMH at least once a year. Once a patient has been committed to outpatient status, PC 1606 requires an annual court report and recommendation regarding continuation of outpatient treatment. The results of this assessment shall be reported to the court. Please refer to **Manual Section 1420: REPORTS & ANNUAL REVIEW PROCESS, Annual Review Reports** for detailed information on this process.

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INPATIENT DISCHARGE

Types of Discharge

There are three ways that a committed SOCP patient can obtain his/her release from inpatient treatment:

- * Patient initiated conditional release petition at the annual review;
- * DMH initiated petition for unconditional discharge; and
- * End of two-year commitment without the filing of a request for extension of the commitment.

These discharge processes are discussed below and diagrammed on the two flow charts at the end of this section.

Inpatient Annual Review Petition

Notification of Rights [WIC 6605(b)]

At the annual review of inpatient commitment, the patient must be notified of his/her right to petition for discharge. The patient must affirmatively waive the right to petition the court, otherwise a show cause hearing will be scheduled. If the right to a hearing is waived, the patient stays in the facility and retains the original commitment term. A copy of the notice and waiver form will be sent to the court with the annual report.

‘Show Cause’ Hearing [WIC 6605(b)]

Should the patient not waive the right to petition the court, the court will schedule a ‘show cause’ hearing on whether the diagnosed mental disorder has so changed that the patient is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged.

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INPATIENT DISCHARGE

Inpatient Annual Review Petition (cont.)

‘Show Cause’ Hearing
[WIC 6605(b)] (cont.)

If no probable cause is found at the ‘show cause’ hearing, then the patient stays in the facility and retains his/her original commitment term. If the court finds probable cause pursuant to WIC 6605(c), then a hearing or trial will be scheduled by the court.

Conditional Release Hearing or Trial
[WIC 6605(d)]

At any discharge hearing, the State must prove beyond a reasonable doubt that the diagnosed mental disorder remains such that the patient is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged.

Ruling for Patient

If the court or jury rules for the patient at this hearing, then the patient will be unconditionally released and discharged pursuant to WIC 6605(e). (See **Notification Requirements** on page 1250.3.)

Ruling Against Patient

If the court or jury rules against the patient, it can consider either one of two options:

- * Establish a new commitment term of two more years in the inpatient facility; or
- * Initiate Conditional Release Per WIC 6608. (See **Conditional Release Process** on following pages.)

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INPATIENT DISCHARGE

DMH Initiated Petitions for Unconditional Discharge [WIC 6605(f)]

Patient No Longer Meets Criteria

If at some point during the term of the commitment DMH has reason to believe that the person no longer meets the criteria of the WIC 6604 commitment (in that the patient's diagnosed mental disorder has so changed that the patient is not likely to engage in sexually violent criminal behavior), the Director of DMH shall seek judicial review pursuant to WIC Section 7250 (Habeas Corpus).

Judicial Review of Petition

The court conducts a judicial review following the procedures of a WIC 7250 Writ of Habeas Corpus. If the petition is subsequently denied, the patient returns to the facility and retains the original commitment term. If the court determines that the individual no longer meets SVP criteria, the person is unconditionally released by the court [PC 6605(f)]. If the person still has parole time remaining, he or she would continue to be supervised as a parolee by CDC for the remaining duration of his or her statutory parole period

End of Two Year Commitment

A SOCP patient will be discharged at the end of his/her two year commitment, if there have been no further court commitments and the county of jurisdiction does not file a petition for new term of commitment.

If an individual is otherwise subject to parole, findings and placements made under 6600 et seq. do not affect the term of parole.

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CONDITIONAL RELEASE PROCESS

Patient Petition for Conditional Release [WIC 6605(b), 6608(a)]

At the time of the annual review the patient has the right to petition the court for conditional release to the community without the recommendation or concurrence of DMH. A hearing upon this petition cannot be held until at least a year from the date of the commitment order. The court will not take action on this petition until it has obtained the written recommendation of the director of the inpatient facility where the patient is residing, as well as the recommendation of the CONREP program regarding outpatient treatment (see below). The course followed would depend on whether the patient has ever filed a prior petition without the DMH Director's concurrence.

Prior Petition Without DMH Concurrence

If the patient has filed a prior petition for conditional release without the DMH Director's concurrence, the court will conduct a review to determine if the petition is frivolous [WIC 6608(a)]. If after the review, the court determines that no hearing is warranted, the court will deny the petition and the patient will continue in treatment in the secure facility.

If the court finds that a hearing is warranted, then the court will hold a hearing on whether the patient would be a danger if under supervision and treatment in the community [WIC 6608(d)]. If the decision is that the person is still a danger, the petition will be denied and the patient will continue in treatment in the secure facility. If, after receipt of a recommendation from both the state hospital [WIC 6608(j)] and CONREP [WIC 6608(e)], the court hearing determines that the person would not be a danger if under supervision and treatment in the community, then a process similar to the DMH Director initiated petition will be followed. (See following pages.)

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CONDITIONAL RELEASE PROCESS

DMH Petition for Conditional Release [WIC 6607(a)]

If there is a determination that the patient's diagnosed mental disorder has changed to the extent that the patient is not likely to commit acts of predatory sexual violence while under supervision and treatment on outpatient status, the Director of DMH shall provide a report to the court with a recommendation for conditional release.

Court Review

Recommendation and Plan

Pursuant to PC 1600 and PC 1604(b), the court will order the CONREP Community Program Director to submit a written recommendation to the court regarding the person's eligibility for outpatient status and the recommended plan for outpatient supervision and treatment. The plan shall set forth specific terms and conditions to be followed during outpatient status.

If the court finds the person to *still be* a danger, it will deny the petition and return the patient for continued treatment in the secure inpatient facility.

Plan Not Accepted by Court

If the court decides not to accept the recommendation of the Community Program Director, the court may order the person conditionally released to the Forensic Conditional Release Program pursuant to WIC 6608(e), as long as it states its reasons for not accepting the recommendation of the Community Program Director on the court record.

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CONDITIONAL RELEASE PROCESS

Court Review (cont.)

Plan Accepted by Court

If the court finds that the person *would not be* a danger if under supervision and treatment in the community [WIC 6608(d)], and accepts the recommendation of the Community Program Director, the person is ordered conditionally released for a period of one year.

Conditional Release Time

If the court grants conditional release, time spent in CONREP shall not count toward the original term of commitment of the sexually violent predator, unless the person is placed in a locked facility by CONREP.

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CONREP TREATMENT

Outpatient Status

WIC 6604 patients on outpatient status are subject to the outpatient placement and service provisions of PC 1600 et seq. similar to other judicially committed patients on outpatient status.

Special Terms and Conditions

Special Terms and Conditions of Outpatient Treatment may be applied including, but not limited to, restrictions on travel, requirements for plethysmography and lie detector testing.

Treatment Requirements

SOCP patients on conditional release will be expected to sign terms and conditions of outpatient treatment tailored to their individual case. Further, once an SOCP patient has been admitted to a CONREP program, certain clinical and supervision issues deserve special attention and monitoring.

Revocation

The PC 1609 revocation process applies to committed SOCP patients.

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DISCHARGE FROM CONREP

Court Response to Annual Review

After one year on conditional release, the court may hold a hearing on the likelihood of dangerousness if unconditionally released [WIC 6608(d)]. This would coincide with the annual review and report to the court. If the person is found to continue to likely be a danger if unconditionally released, the person shall continue on conditional release. If the person is found to not be a danger if unconditionally released, the person shall be unconditionally released. If the person remains under parole jurisdiction, he/she would continue under parole with CDC.

DMH Initiated Discharge

No Direct CONREP Petition

The provisions of PC 1607 do not apply to persons committed pursuant to WIC 6600. As a result, the outpatient treatment supervisor may *not* directly petition the court that the person is no longer a Sexually Violent Predator. The discharge procedures outlined below must be followed.

CONREP Evaluation Report and Recommendation for Discharge [MH 7021]

Whenever the CONREP program has reason to believe that an outpatient SOCP outpatient's diagnosed mental disorder has so changed the patient is not likely to commit acts of predatory sexual violence, the Community Program Director will complete an evaluation report containing the basis for that determination.

The Community Program Director shall complete and forward form **MH 7021, Recommendation for Discharge of Sex Offender Commitment Program Patient**, along with the evaluation report to the Manager of CONREP Operations who will review and forward the material to the Deputy Director, Long Term Care Services.

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DISCHARGE FROM CONREP

DMH Initiated Discharge (cont.)

CONREP Evaluation Report and
Recommendation for Discharge [MH 7021] (cont.)

If the DMH Director concurs, DMH will recommend that the county attorney file a Petition for Unconditional Discharge with the court. In no case shall a recommendation for unconditional discharge be made without the approval and concurrence of the Director, DMH. A courtesy copy of MH 7021 should also be sent to the parole agent of record if the person is on concurrent parole status.

Additional Information

For a more detailed description of the discharge process and additional information on the requirements for determining if a patient is, in fact, not likely to commit acts of predatory sexual violence, please refer to manual **Section 1430: SEPARATION PROCESS, Discharge: Sex Offender Commitment Program [WIC 6604]**.